IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1354 of 2006

Date of decision: 31.10.2007.

Premi Devi ... Petitioner

Versus

State of H.P. & Anr. ... Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr. Surinder Sharma, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J.:

This judgment shall dispose of the writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India.

Briefly stated the facts of the case are that the petitioner was owner of land comprised in Khasra No. 34/1 and Khasra No. 34 measuring 0-15 bighas situated in village Gahar, Pargana Ajmerpur, Tehsil Ghumarwin, Distt. Bilaspur. The possession of the petitioner's land was taken by the H.P.P.W.D. for the construction of Gahar-Padhayan-Kot Naswal road in the year 1978 and the road was constructed in the year 1981-82. A notification under Section 4 of the Land Acquisition Act, 1894, was issued on 2.5.1990 for acquiring the land of the petitioner. The award was announced by respondent No. 2 on 23.6.1993. The petitioner received the awarded amount under protest.

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

The petitioner filed a petition under Section 18 of the Land Acquisition Act for enhancement of compensation before respondent No. 2 in the month of October, 1994. No reference was made by respondent No. 2 to the District Judge under Section 18 of the Act. The petitioner sent a legal notice dated 21.4.2006 to respondent No. 2 for forwarding a reference but no reference was made to the District Judge, Bilaspur by respondent No. 2. The action of respondent No. 2 for not forwarding the reference to the District Judge has been challenged by the petitioner by filing the present writ petition alleging that the said action is illegal, arbitrary and discriminatory and as such, respondent No. 2 may be directed to make a reference to the District Judge.

A notice of the writ petition was issued to the respondents who filed reply.

We have heard the learned counsel for the parties and have also gone through the record of the case.

The facts of the case are very clear that the possession of the land was taken by the State in 1978 and the road was also constructed in the year 1981-82. The notification under Section 4 of the Act was issued on 2.5.1990 and the award was announced on 23.6.1993. The reference was required to be made in terms of Section 18 of the Act by the petitioner within a period of six weeks of the receipt of notice from the Collector or within six months from the date of the Collector's award, which ever period shall expire first. According to the amendment of Section 18 by State of Himachal Pradesh, the Collector may entertain an application under this Section after the expiry of the period of six weeks, but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time.

However, no reference was made by the petitioner within the statutory period prescribed under the law and he made the reference as alleged by him only in October, 1994. Even if the said reference was not forwarded by respondent No. 2 to the District Judge under the provisions of the Act, the petitioner did not take any action right from October, 1994 to 10.12.2006 when only he filed the present writ petition after a lapse of about 12 years.

A question arises as to whether the said reference made by the petitioner after lapse of the statutory period was liable to be forwarded to the District Judge by the Land Acquisition Collector i.e. respondent No. 2 or not. A connected question arises as to whether there is any justification to allow the present writ petition having been filed after 12 years, after the reference was made before respondent No. 2 who did not forward the same to the District Judge for making award.

Learned Advocate General had relied upon the decision of Hon'ble Apex Court in making his submission that the present writ petition is liable to be dismissed. He has relied upon the decision in **Mahadeo Bajirao Patil** Vs. **State of Maharashtra and others**, **(2005) 7 Supreme Court Cases 440**. A perusal of this decision shows that the Hon'ble Apex Court had held in Para-14 of the judgment as under:-

> "Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under Section 18 of the Act has no power of

condonation of delay in making an application under the aforesaid section."

It is, therefore, clear that no application was filed by the petitioner before the Land Acquisition Collector within time for making a reference to the District Judge and the Land Acquisition Officer had no power to condone the delay in making application under Section 18 and therefore, the Land Acquisition Officer had rightly not condoned the delay in filing the application for reference. Moreover, the petitioner approached this Court after more than 12 years and no case is made out for allowing the writ petition at this stage and the application filed by the petitioner for making a reference under Section 18 was time barred and the present writ petition also suffers from delay and latches and as such, cannot be allowed after a lapse of nearly 12 years for both these reasons. There is no merit in the petition, which deserves to be dismissed and the same is dismissed accordingly. However, the parties are left to bear their own costs.

(V.K. Ahuja)
Judge

(Deepak Gupta)
Judge

October 31, 2007
(BSS)